

August 13, 2001

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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AUG 13 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: CC Docket Nos. 00-218, 00-249, 00-251

Dear Ms. Salas:

Enclosed for filing in this proceeding are an original and three (3) copies of the Motion to Strike Verizon's Direct Testimony of Harold West as filed by the Petitioners, AT&T, WorldCom and Cox. A copy of this letter and the Motion is being served on Verizon Virginia, Inc. by overnight mail and by electronic mail.

Thank you for your consideration in this matter.

Sincerely yours,

Mark Keffer/sb

Allen Fairfield/sb

Don Cosby/sb

cc: Service List

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
Petition of AT&T Communications)
of Virginia, Inc., Pursuant)
to Section 252(e)(5) of the)
Communications Act, for Preemption)
of the Jurisdiction of the Virginia)
State Corporation Commission)
Regarding Interconnection Disputes)
with Verizon Virginia, Inc.)

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

CC Docket No. 00-251

**MOTION TO STRIKE VERIZON
VIRGINIA'S DIRECT TESTIMONY OF HAROLD WEST**

In Verizon's Direct Testimony of Harold West and its Attachment A, Verizon relies on data from thirteen competitors, eleven of whom are not party to this case,¹ to suggest that local exchange competition is "thriving" in Virginia. The information Verizon cites from these CLECs is proprietary to the CLECs. Verizon shared this proprietary information with the Commission. Verizon did not share this information with the Petitioners in this case.

Upon receipt of this information, the Petitioners requested that Verizon obtain the CLECs' consent to release the proprietary information to the parties under the FCC's protective agreement. Despite that request, there is no indication that Verizon even tried to do so.

¹ Verizon relies on data from AT&T, Cox, Cavalier, Adelphia, Covad, Rhythms, NAS, One Point, Net2000, Allegiance Telecom, Comcast, Intermedia, KMC, NTELOS, US LEC. Verizon fails to identify the fact that One Point is a subsidiary of Verizon Corp, and not actually a competitor.

The Petitioners only seek accurate facts. The Petitioners have no quarrel with Verizon's presentation of this material *provided* the Petitioners have the ability to review the material and determine the accuracy of the facts underlying Verizon's conclusion that Virginia has a thriving competitive local exchange market. If the Petitioners cannot review the information, the Petitioners cannot determine whether Verizon has accurately portrayed the state of competition in Virginia. The portions of the Direct Testimony of Harold West which rely on information proprietary to CLECs which are not parties to this case must be stricken from this proceeding.

I. The Direct Testimony Of Harold West Contains Information Which The Petitioners Cannot Review, Let Alone Rebut.

In Harold West's Direct Testimony and its Attachment A, titled "Local Competition in Virginia,"² Verizon refers to the following proprietary information from several CLECs, including AT&T, Cox and WorldCom:

- (1) The number of telephone numbers which various CLECs have ported away from Verizon
- (2) The number of lines the CLECs have provisioned using their own facilities;
- (3) The number of orders for directory listings the CLECs have placed with Verizon;
- (4) The number of unbundled loops the CLECs were leasing from Verizon;
- (5) The number of NXX codes the CLECs had obtained for Virginia;
- (6) The number of resold lines the CLECs have ordered from Verizon; and
- (7) The number of physical and virtual collocation arrangements.

Verizon has access to these by virtue of their unique position of ILEC. All of these CLECs, even if they are facilities-based, need some service from Verizon. All

² Verizon failed to include Attachment A to the Direct Testimony of Harold West as filed on July 31, 2001. On August 8, 2001, Verizon sent a revised copy of the Direct Testimony of Harold West including the Attachment A. Recognizing its error, Verizon stated that it would not object if Petitioners filed rebuttal testimony to Harold West's testimony by August 24, one week after rebuttal testimony is due in the case. Regardless, without the ability to review the CLEC-specific proprietary information, there is little Petitioners could say in rebuttal testimony.

carriers, even facilities-based carriers, need to port telephone numbers from Verizon, order directory listings from Verizon. Moreover, carriers request collocation in Verizon's central offices, leaving Verizon well aware of the location of a competitor's facilities. Because Verizon is the ILEC, Verizon is privy to a wealth of proprietary information - information which Verizon compiled and shared with the Commission, but not with the parties to this case.³

The Petitioners do not object to the introduction of this CLEC-specific information *provided* the Petitioners have a full opportunity to review and rebut the CLEC-specific proprietary information. Without a full opportunity to review the material, the Petitioners cannot determine whether Verizon accurately reflects a particular CLEC's current service accurately. One instance in particular highlights the incomplete nature of Verizon's disclosure of CLEC-specific proprietary information. Verizon states that CLECs are providing service through 107,000 resold lines. Attachment A to Harold West's Direct Testimony at 1. Verizon then adds a footnote which states that One Point uses some undisclosed, proprietary number of these resold lines. *Id.* at 1 n.2. Verizon fails to disclose either to the Commission or to the parties that One Point is subsidiary of Verizon Corp. The failure to disclose the fact that One Point is not a competitor suggests that Verizon may have similarly failed to disclose information needed to assess the accuracy of the conclusions Verizon draws from the CLEC-specific information.

Additional instances demonstrate the potential for inaccurate conclusions to be drawn from Verizon's use of the CLEC-specific information. For example, it may be true that CLECs have 1300 NXX codes in Virginia today, but how many of them are being

³ Verizon does not indicate that it informed the CLECs that it would be disclosing their proprietary information to the FCC in this proceeding.

used? Perhaps the codes are less than fully utilized. Similarly, it may be true that data CLECs and DSL providers have approximately 175 physical collocation arrangements in Virginia, but how many of those arrangements are dark right now? Bankruptcies of several data CLECs and DSL providers have been widely reported. Do the data CLECs and DSL providers who have the 175 collocation arrangements in Virginia have plans to provide service going forward or are they headed for bankruptcy? As of now, neither the Petitioners nor the FCC can know for sure.

Petitioners request, simply, the ability to rebut Harold West's testimony. To do so, Petitioners need access to the CLEC-specific proprietary information on which Verizon relies. If Verizon will not or cannot obtain the consent of the CLECs to reveal the information, subject to the protective order in this case, Verizon should not be permitted to introduce the information in this proceeding. Verizon must produce the CLEC-specific information by August 22, 2001. The Petitioners could then have until September 5 to file testimony rebutting the Direct Testimony of Harold West. If Verizon fails or refuses to obtain the consent needed to share this information, the portions of the Direct Testimony of Harold West which rely on CLEC-specific proprietary information must be stricken.

V. Conclusion.

Verizon has injected information into this case which the Petitioners can neither review nor rebut. Without access to the CLEC-specific proprietary information, neither the Petitioners nor the Commission can assess the accuracy of Verizon's conclusion that Virginia has a thriving competitive local exchange market. Verizon should be required to obtain the consent of the CLECs to produce the information to the Petitioners in this case,

subject to the FCC's protective order, or strike the information from the Direct Testimony of Harold West.

Respectfully submitted,

Mark Keffer, SA

Don Crosby, SA

Allen Freifeld, SA

Mark A. Keffer
Stephanie A. Baldanzi
AT&T
3033 Chain Bridge Road
Oakton, Virginia 22185
703 691-6046 (voice)
703 691-6093 (fax)

Carrington F. Phillip
Vice President,
Regulatory Affairs
Donald L. Crosby
Senior Counsel
Cox Communications Inc.
1400 Lake Hearn Drive,
N.E.
Atlanta, Georgia 30319
(404) 269 8842

Allen Freifeld
WorldCom Inc.
1133 19th Street, N.W.
Fourth Floor
Washington DC 20036
(202) 736 6104

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Petition of WorldCom, Inc. Pursuant)	
to Section 252(e)(5) of the)	
Communications Act for Expedited)	
Preemption of the Jurisdiction of the)	CC Docket No. 00-218
Virginia State Corporation Commission)	
Regarding Interconnection Disputes)	
with Verizon Virginia Inc., and for)	
Expedited Arbitration)	

In the Matter of)	
Petition of Cox Virginia Telecom, Inc.)	
Pursuant to Section 252(e)(5) of the)	
Communications Act for Preemption)	CC Docket No. 00-249
of the Jurisdiction of the Virginia State)	
Corporation Commission Regarding)	
Interconnection Disputes with Verizon)	
Virginia Inc. and for Arbitration)	

In the Matter of)	
Petition of AT&T Communications of)	
Virginia Inc., Pursuant to Section 252(e)(5))	CC Docket No. 00-251
of the Communications Act for Preemption)	
of the Jurisdiction of the Virginia)	
Corporation Commission Regarding)	
Interconnection Disputes With Verizon)	
Virginia Inc.)	

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 2001, a copy of the Petitioners' Motion to Strike Verizon's Direct Testimony of Harold West was sent via overnight delivery and electronic mail to:

Dorothy Attwood, Chief
Common Carrier Bureau
Federal Communications Commission
Room 5-C450
445 12th Street, S.W.
Washington, D.C. 20544

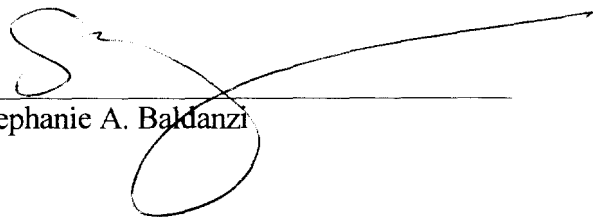
Jeffrey Dygert
Assistant Bureau Chief
Common Carrier Bureau
Federal Communications Commission
Room 5-C317
445 12th Street, S.W.
Washington, D.C. 20544

Katherine Farroba, Deputy Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
Room 5-B125
445 12th Street, S.W.
Washington, D.C. 20544

Jodie L. Kelley, Esq.
Jenner and Block
601 13th Street, NW
Suite 1200
Washington, DC 20005
(for WorldCom)

Jill Butler
Vice President of Regulatory Affairs
Cox Communications, Inc.
4585 Village Avenue
Norfolk, Virginia 23502

Karen Zacharia, Esq.
Verizon, Inc.
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201



Stephanie A. Baldanzi